

CHAPTER I

INTRODUCTION

1.1 Background

In this day and age, it is undeniable that technology has already become a part of our everyday life. It has had an impact on every aspect of our lives, whether we are aware of it or not. Technology has endowed us with a variety of resources and information, allowing us to do things we could never do before. It is impossible to deny that the development of technological advancement has been rapidly increasing right before our eyes. The growth of digital technology has ushered us into a new era of digitalization. This may be demonstrated by the fact that many conventional activities that are previously performed physically can now be done online, one of which is communication.

The internet is one of the products of technological development. It has enabled us to access everything with just the touch of our hands. It's fascinating to see the enormous growth in how cultural shifts influence our daily lives. Moreover, the movement restriction caused by the COVID-19 pandemic has forced us to rely heavily on the internet.

According to the Digital 2021: Global Overview Report, which is a survey conducted by We Are Social and Hootsuite, in Indonesia, out of a total population of 274.9 (two hundred seventy four point nine) million, there were 202.6 (two hundred

two point six) million internet users per January 2021, with 170 (one hundred seventy) million of them being social media users, accounting for 61.8% (sixty one point eight percent) of the total population.¹ This shows that one of the most popular activities among internet users is social media. Not only does it allow us to access lots of public information, but it can also change how we communicate and interact with one another.

It is true that social media has a very positive impact in terms of connecting us to one another and making things a lot easier than usual. It also allows people to interact freely with people around the world without being physically present. Social media will allow people to interact remotely that requires only the availability of the internet and electronic gadgets.

However, this could create a whole new problem whereas social media can create dangerous and detrimental behaviors. One of which is the development of Sexual Violence Crime. Sexual violence is also considered a violation of human rights because it is harmful not only physically and mentally, but also disturbs the human dignity of the victim. With a lot of features that are accessible easily and are available for anyone through social media, people can see and leave comments on basically anything. According to John Suler, a Rider University Professor of Psychology who has written on people's online behavior in the *CyberPsychology and Behavior* journal, anonymity

¹ Kemp, Simon. 2021. "Digital in Indonesia: All the Statistics You Need in 2021." DataReportal – Global Digital Insights. February 11, 2021. <https://datareportal.com/reports/digital-2021-indonesia>

and the feeling of being invisible breeds courage in people, causing them to say or do things they would never do in real life.² As our virtual and real lives become more integrated each day, social media can be a dangerous place to be, and that it can be just as dangerous as real life. The ability to remain anonymous during the use of social media could have a direct impact on users' online behavior.

World Health Organization (WHO) defines sexual violence as “any sexual act, attempt to obtain a sexual act, or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. It includes rape, defined as the physically forced or otherwise coerced penetration of the vulva or anus with a penis, other body part or object, attempted rape, unwanted sexual touching, and other non-contact forms”.³

Up until now, sexual violence can happen at any time, and in any place regardless of who you are as a person, whether you are women or men, young or old. However, the act of sexual violence tends to target women. The amount of sexual violence against women in Indonesia has been concerning under the radar. The National Commission on Violence against Women or *Komisi Nasional Anti Kekerasan terhadap Perempuan (Komnas Perempuan)* recorded that there were at least 46,698 (forty six thousand six hundred ninety eight) cases of sexual violence against women

² “How Anonymity Affects Cyberbullying.” n.d. <https://www.trulioo.com>.
<https://www.trulioo.com/blog/invisible-online-how-anonymity-affects-cyberbullying>.

³ WHO. 2021. “Violence against Women.” Who.int. World Health Organization: WHO. March 9, 2021. <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

from 2011 to 2019. From cases that have been reported, they received reports of 23,021 (twenty-three thousand twenty one) cases of sexual violence occurring in the public situation, including 9,039 (nine thousand thirty nine) cases of rape, 2,861 (two thousand eight hundred sixty one) cases of sexual harassment, and 91 (ninety one) cases of sexual-related cybercrimes. In fact, it is being stated that every 2 (two) hours there are at least 3 (three) women in Indonesia who have experienced sexual violence.⁴ This statistic is worrying, and a lot needs to be done in order to prevent future cases from happening.

In Indonesia, Sexual violence are regulated within the Indonesian Criminal Code under the term “*Kejahatan Kesusilaan*”. The term sexual violence has been a controversial thing to discuss on particularly in Indonesia. There has been a lack of clear and knowledgeable socialization from the government and other relating agencies about the facts and information about sexual violence and other related issues. The lack of awareness from all the citizens of Indonesia has been one of many important reasons as to why sexual violence keeps happening right in front of us. Certainly, the government needs to take action towards this issue.

Sexual violence can be divided into two, namely physical and non-physical sexual violence. Physical sexual violence is what is been regulated by the Indonesian Criminal Code, under “obscenity” or *Perbuatan Cabul* as provided for in Articles 289

⁴ developer. 2020. “46.698 Kasus Kekerasan Seksual Terjadi Sepanjang 2011-2019.” Medcom.id. October 6, 2020. <https://www.medcom.id/nasional/peristiwa/akWLDROK-46-698-kasus-kekerasan-seksual-terjadi-sepanjang-2011-2019>.

to 296 of the Indonesian Criminal Code. On the other hand, non-physical sexual violence usually occurs in the form of unwelcomed staring, stalked, being aggressively approached, photographed without consent, and many more.

There is a lot of non-physical sexual violence that is committed but goes unpunished because people sometimes take it lightly. They only see the term sexual violence as rape, domestic violence, or others while in fact, it is more than that.⁵ Harassment does not require the perpetrators to make direct eye contact or physical contact. However, the non-physical type of sexual violence has not been governed in the Indonesian Criminal Code. Non-physical sexual violence incidents will normally be prosecuted under the Electronic Information and Transactions Law (ITE) Law or sadly, ignored. This statistic highlights the importance of defining non-physical violence, and the lack of a specific definition indicates that the legal system's handling of sexual harassment still needs to be improved in order to better protect women, who are particularly vulnerable to this crime.

The correlation of sexual violence to human rights also hasn't been stated in any of the regulations that existed. As we all know, the concerns of human rights involve many aspects. In terms of sexual violence, the correlation of human rights can

⁵ Priherdityo, Endro. n.d. "Pelecehan Seksual Verbal Dianggap Lumrah Di Indonesia." Gaya Hidup. Accessed September 15, 2021. <https://www.cnnindonesia.com/gaya-hidup/20160722103508-277-146296/pelecehan-seksual-verbal-dianggap-lumrah-di-indonesia>.

be seen from the standpoint of cultural, social, economic, and political values in that society.

Violence against women can impede their ability to exercise their right to live their lives as they see fit. Women are deprived of their rights to live comfortably, which therefore means that it is in fact a violation of their rights as human beings which is guaranteed under our constitution. As stipulated in the 1945 Constitution Chapter 10 (A) Articles 28-28J, the state will always guarantee and protect all the rights and dignity possessed by humans as a whole without being damaged with anything by all means, when and where, even the protection of human rights and dignity is always placed above all other needs. From the explanation above in the 1945 Constitution, the act of sexual violence by the offender towards women is considered to be a violation of both the 1945 Constitution and also human rights. The act of sexual violence will violate the rights of every person to have their rights and dignity without being taken away or damaged in any way.

In a situation where women become a victim of sexual violence, their rights of being free from such danger and their dignity are being severely damaged. As a result, as stated in the previous paragraph, the government should therefore protect, by all means, the rights and dignity of every Indonesian citizen from danger and harm.

In addition, sexual violence can also hinder society to achieve gender equality between women and men. All of those reasons are very important to address because

there are many loopholes that can be found in the Indonesian legal system in regard to sexual violence. The implementation of the law by government officials needs to be improved as well. Not only in issues like sexual violence, the Indonesian law, and government officials has been known to have an issue of enforcing the law. Enforcing the law and socializing it to the public is extremely important, especially in issues such as sexual violence, because it can raise public awareness, and spreading knowledge about sexual violence, particularly against women, will indeed benefit the public.

Sexual Violence can be categorized as a form of Gender-based Violence. There is no official definition of gender-based violence, however, the United Nations High Commissioner for Refugees refers to Gender-based Violence as harmful acts directed at an individual based on their gender where it is rooted in gender inequality, the abuse of power, and harmful norms.⁶ Gender-based violence is a phenomenon that happens all around the world that violates the human rights of those who are victimized because of their gender identity or expression. Also, it comes in many forms, which include physical violence, which is a type of direct action that uses physical force or weapons to intentionally injure the victim and can even result in death, psychological violence which typically consists of actions that cause the victim to feel emotionally attacked,

⁶ "ELIMINATING ONLINE VIOLENCE AGAINST WOMEN ... - OHCHR." Accessed September 15, 2021.
<https://www.ohchr.org/Documents/Issues/Women/WRGS/GenderDigital/DueDiligenceProject.pdf>.

socio-economic violence which includes discrimination towards women, as well as violence against children, or even sexual violence.

Gender-based Violence can happen to all people regardless of their identity, status, gender, sexual orientation, etc. However, it primarily affects women and even young girls, just like sexual violence. According to the Legal Aid Foundation of the Indonesian Women's Association for Justice (LBH APIK), 1,178 (one thousand one hundred seventy-eight) reports of violence against women and children were received in 2020, a significant increase from 794 (seven hundred ninety four) reported cases in 2019 and 837 (eight hundred thirty seven) in 2018.⁷ This highlights the importance of the law to protect women since they are in fact the group of individuals that are primarily targeted.

Sexual violence against women still continues and it takes many forms in Indonesia, and with the help of technology, new gender-based violence is invented. The advancement of new digital technology has enabled perpetrators to engage in digitally enabled abusive behaviors, which is referred to as Online Gender-based Violence. This kind of violence is not a new type of violence, but rather a digitally enhanced version of the one that already exists.

⁷ Post, The Jakarta. n.d. "Pandemic Sees Rising Violence against Indonesian Women, but Few Report to Police." The Jakarta Post. Accessed September 15, 2021. <https://www.thejakartapost.com/news/2021/01/12/pandemic-sees-rising-violence-against-indonesian-women-but-few-report-to-police.html>.

To be considered Online Gender-based Violence, the act of violence must have the intention or intent to harass the victim based on gender or sexuality, just like gender-based violence in the real world and it is also as destructive as offline gender-based violence. Gender-based violence can occur both online and offline, with victims or survivors subjected to a combination of physical, sexual, and psychological torment. Threats or saying words of sexual intent online, which causes the victim to feel that their human rights have been violated because they feel insulted and humiliated is also considered as a non-physical type of sexual violence.

Based on reports received by the National Commission on Violence against Women or *Komisi Nasional Anti Kekerasan terhadap Perempuan (Komnas Perempuan)*, there are at least 8 (eight) forms of online gender-based violence, namely cyber grooming, cyber harassment, hacking, illegal content, infringements of privacy, malicious distribution, online defamation, and online recruitment which further explained through Internet Governance Forum that online gender-based violence could include stalking, intimidation, sexual harassment, defamation, hate speech, and exploitation.⁸

Additionally, according to the data from the *Catatan Tahunan Komisi Nasional Anti Kekerasan terhadap Perempuan (CATAHU Komnas Perempuan)* in 2019,

⁸ Media, Kompas Cyber. 2021. "Kasus Kekerasan Berbasis Gender Online Di Indonesia Meningkat, Ini Kategorinya!" KOMPAS.com. June 20, 2021. <https://www.kompas.com/parapuan/read/532750556/kasus-kekerasan-berbasis-gender-online-di-indonesia-meningkat-ini-kategorinya>.

throughout 2018 there were 97 (ninety-seven) reports of violence that occurred in cyberspace that is received by Complaints Unit for Referral to Komnas Perempuan or *Unit Pengaduan untuk Rujukan Komnas Perempuan*. They classified these reports into several types of Online Gender-based Violence, namely revenge porn, malicious distribution, cyber harassment, impersonation, cyberstalking, cyber recruitment, sexting, cyber hacking, and morphing. This shows a significant increase annually in terms of cases reported considering that in 2018 there are 65 (sixty-five) cases reported.

The author in this thesis will focus on talking about Online Sexual Violence against women and how far our current legal system has provided legal protection. Under the definition that exist under Online Gender-based Violence, sexual harassment is a repeated harassment through unsolicited messages and contacts, hate speech and posts on social media targeted at a specific gender or sexuality, incitement to physical violence, and use of obscene images or online content to devalue women or other genders.⁹

There is a lot of activities that can be considered as a sexual harassment under Online Gender-based Violence, namely Trolling, Non-consensual Intimate Photo/Video Spread (revenge porn), Extortion (extortion and sextortion), Online stalking, Tech-enabled Surveillance, Doxing, Outing, Pornography, Photo and Video

⁹ nendensan. 2019. "Mengenal Kekerasan Berbasis Gender Online (KBGO)." Medium. June 2, 2019. <https://nendensan.medium.com/mengenal-kekerasan-berbasis-gender-online-kbgo-a4ec1bd95632>.

Manipulation, Honey Trap, Online Child Porn, Cyber Grooming¹⁰ whereas all of these actions is considered to be a sexual violence act that is occur online, using any kinds of internet based application or involving any kind of technology.

Moreover, it is important to highlight that Online Gender-based Violence against a woman can be of more than one type at the same time. Often, these types of Online Gender-based Violence intersect with each other and do not stand alone. Online Gender - based Violence cases are found on various popular social media platforms.

In terms of this year, according to the 2021 Annual Notes, which were released on March 5, 2021, the National Commission on Violence against Women or *Komisi Nasional Anti Kekerasan terhadap Perempuan (Komnas Perempuan)* stated that they received 940 (nine hundred forty) Online Gender-Based Violence cases throughout 2020, an increase of more than three times compared to 281 (two hundred eighty one) cases the previous year.¹¹ All these facts prove that Indonesia and other countries around the world are experiencing a significant increase in the act of Online Gender - based Violence and most of the cases were experienced by women.

However, we must keep in mind that the statistics above only include reported cases, implying that there could be many more cases that go unreported. In an online

¹⁰ “Kekerasan Berbasis Gender Online (KBGO).” n.d. Kumparan. Accessed September 15, 2021. <https://kumparan.com/mohammadtetraalubaidah/kekerasan-berbasis-gender-online-kbgo-1v16FRfXjzk>.

¹¹ “[Rilis Pers] Lawan KBGO Yang Merajalela, Peran Aparat Penegak Hukum Perlu Ditingkatkan – SAFEnet.” n.d. Id.safenet.or.id. <https://id.safenet.or.id/2021/03/lawan-kbgo-yang-merajalela-peran-aparat-penegak-hukum-perlu-ditingkatkan/>.

sexual violence act, there has been many cases that it is being ignored and are not being taken seriously. There are times where people ignore the fact that it is a serious problem and they treat those acts as a joke or a normal thing that people do, which is wrong.

Online Sexual Violence against women should not be taken lightly, despite the fact that it occurs in the virtual world. However, it should be noted that the consequences of this crime are just as serious as sexual violence in the real world. The impact of online sexual violence on women can cause them to suffer from significant trauma, ongoing depression, deep fear, post-traumatic stress disorder (PTSD), self-harm, and, in the worst-case scenario, suicide. The unfortunate event may leave a mark on her that will last a lifetime. It is even possible that the impact will be integrated with her real world because online sexual violence against women is a manifestation of such violence offline.

No women should experience it, in the 1945 Constitution, specifically on Article 28G, it is specifically stated that each person is entitled to the protection of themselves, their dignity and they're also entitled to feel safe and secure and be free from any degrading treatment which means that our rights to live peacefully are supposedly guaranteed by our constitution. However, this crime clearly disrupts women's life, clearly showing that it could constitute a violation of human rights.

Until now, there has not been clear and explicit laws and regulations that the general public can rely on. The explanation regarding sexual violence is very unclear

and obscure to the general public. There is already a law that mention the issue of sexual violence in the Indonesian Criminal but there still no definite definition of Sexual Violence. However, the definition of the essence of using “violence” itself is laid out in Article 289 of the Indonesian Criminal Code. In addition, the lack of the words “online” creates an ambiguity whether or not such articles could give protection against Online Sexual Violence.

The lack of comprehensive law can be the reason why women hesitate to report the crime. Just this year, one of the victims of Online Sexual Violence, that is revenge porn, stated that she was hesitant to report the case to the police due to the lengthy legal process, which was deemed discriminatory against women as well as posing potential criminal threats in the Pornography Law and the Electronic Information and Transactions (ITE) Law. This crime brings her to her lowest point in life, where she suffers from depression and suicidal thoughts.¹²

Even, the attempt to report the crime could even backfire to them. In Indonesia, a well-known case occurred in which the victim of Online Sexual Violence was not protected but was instead caught up in the law and sentenced which is the case of Baiq Nuril, one of the employees at SMA Negeri 7 Mataram, West Nusa Tenggara who was sexually harassed by the former principal of the school where she worked.¹³

¹² BBC News Indonesia. n.d. “Korban Revenge Porn: ‘Saya Berkali-Kali Mencoba Bunuh Diri.’” Accessed September 15, 2021. <https://www.bbc.com/indonesia/indonesia-56629820>.

¹³ Perjalanan Kasus Baiq Nuril: Dari Pengadilan Sampai Amnesti. Accessed September 15, 2021, from <https://nasional.tempo.co/read/1224953/perjalanan-kasus-baiq-nuril-dari-pengadilan-sampai-amnesti>

The severity of the cases that is happening in Indonesia needs to be prevented by a clear laws and regulations that covers all aspects of sexual violence or harassment. In Indonesia specifically, until now there is still a lack of understanding and awareness regarding this issue. This issue must change immediately in order to protect and help all the victims with the necessary justice.

From the facts I stated above, it is clear that there is an urgency to protect women against Online Sexual Violence which then could ensure their legal protection. Therefore, based on that urgency, the Author is writing legal research titled “Legal Protection for Women in Indonesia Against Online Sexual Violence” which the Author would analyze the existing laws in Indonesia in order to find out whether or not it already satisfies that urgency.

The author also acknowledges that there is existing research on sexual violence, however there’s still a few of them that touch on the subject regarding Online Sexual Violence, therefore the Author wants the accommodate that through this thesis.

1.2 Formulation of Issues

In regards to the background described above, the formulation of issues that would be discussed would be, namely:

1. To what extent have the existing laws regarding Sexual Violence provided legal protection against Online Sexual Violence towards women in Indonesia?

1.3 Research Purposes

Based on the formulation of the issues above, the author's purposes in writing this thesis are as follows:

1. To determine the extent of legal protection for women in Indonesia against sexual online violence

1.4 Research Benefits

1.4.1 Theoretical Benefits

Theoretically, this thesis is meant to give insights with the support of facts and data that is being obtained in the research process. However, the author is focused on giving insights on whether or not the law has provided legal protection against Online Sexual Violence against women in Indonesia by looking at the existing laws and regulations in the Indonesian legal system. From this thesis, the author hopes that it can provide a clear understanding towards the issues of Online Sexual Violence and why it is as important as any Sexual Violence. In addition, the author hopes that this thesis can provide references for future research on legal protection for women in Indonesia against Online Sexual Violence.

1.4.2 Practical Benefits

The author aims to provide assistance and insights towards the government about the existing laws and regulations concerning Online Sexual

Violence. The author is concerned about the ambiguity within the existing laws and regulations as well as the topic of Online Sexual Violence. In addition, the author wish that the ambiguity found in Indonesian laws and regulations through this thesis would show that there is a legal vacuum in terms of the legal certainty of Online Sexual Violence, which this uncertainty could lead to the lack of legal protection towards the victims. This thesis is intended to address the concern regarding the legal protection of the victim of Online Sexual Violence and assist in strengthening it in order to protect future women from Online Sexual Violence.

1.5 Systematic of Writing

This thesis consists of five chapters to ensure the reader's convenience in understanding the substance of this thesis.

CHAPTER I: INTRODUCTION

The aim of this chapter is to provide general information on the subject of this thesis, which is later divided into five parts, consisting of the background, the formulation of the issues, the purpose of this thesis research and also its benefits.

CHAPTER II: LITERATURE REVIEW

In this chapter, the author will provide explanations in two sub-chapters consisting of theoretical and conceptual framework that will explain the theory in general and comprehensively in terms of legal protection for women in Indonesia against online sexual violence.

CHAPTER III: RESEARCH METHODOLOGY

The author would discuss the methods that are used in the research of this particular topic in this chapter, such as how to carry out and obtain the data for this research and process and analyze the data that has been obtained.

CHAPTER IV: ANALYSIS

In the fourth chapter, the author will specifically explain the analysis of the results of research regarding the legal protection for women in Indonesia against online sexual violence as well as its application or implementation of regulations that will provide the answer to the issue raised. The Author will begin by assessing existing law, beginning with the Criminal Code and other laws, pointing out any issues and/or ambiguities in their application to the case of Online Sexual Violence. The Author will then discuss what ideal protection looks like.

CHAPTER V: CONCLUSION AND RECOMMENDATION

In the last chapter, the author will provide a conclusion following the discussion of the analysis on Chapter IV to conclude the answers to all the research problems. In addition, the author will make suggestions and recommendations on these issues which may be useful, and which may help to ensure and enhance the protection of the rights of victims of online sexual violence.

